

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3655 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

KANUBHAI @ RAJU @ KANAIYALAL GORDHANBHAI KOLI
Versus
STATE OF GUJARAT

Appearance:

MR M.R.PRAJAPATI for MR HD CHUDASAMA for Petitioner
MR H.L.JANI, A.G.P., for Respondent Nos. 1, 2, 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 25/06/2001

ORAL JUDGEMENT

Heard Ld.Advocate Mr.M.R.Prajapati for
Mr.H.D.Chudasama on behalf of the petitioner and
Ld.A.G.P. Mr.H.L.Jani appearing on behalf of the

respondent State.

2. In the present petition the petitioner has challenged the detention order dated 15th September, 2000 passed by the District Magistrate, Surendrangar under the provision of Section 3(1) of Prevention of Anti-Social Activities Act ('the PASA' for short). The grounds of detention have been communicated and supplied to the present petitioner under Section 9(1) of the Constitution of India. The detaining authority has claimed the privilege under Section 9(2) of the PASA Act. According to the statements of secret witnesses the petitioner has been considered to be a bootlegger under Section 2(b) of the PASA Act.

3. According to the ground of detention, in all, seven offences were registered against the present petitioner under the provisions of Bombay Prohibition Act. The last offence was registered on 15th January, 2000. There were three unregistered offences dated 30th January, 2000, 5th February, 2000 and 9th February, 2000 as per the statement of secret witnesses. The statements of secret witnesses recorded by the concerned Police Inspector on 19th February, 2000 the same has been verified by Dy.S.P. on 7th March, 2000 and thereafter, it was verified by the detaining authority on 8th September, 2000. The respondent-State has not filed any reply.

4. The Ld.Advocate Mr.Prajapati has submitted that though various contentions raised by present petitioner challenging the detention order. According to his submission, even one contention is enough to vitiate the order of detention. Therefore, he submitted that as per the Ground 'I' at Page 9 of the petition, the petitioner has challenged the detention order on the ground that considering the registered and unregistered offences dated 15th January, 2000 and 9th February, 2000, the detention order has been passed on 15th September, 2000. Therefore, there was a delay about seven months in passing the detention order. The said delay has not been explained by the respondent-State and, therefore, there was no proximate or having any direct nexus which required to pass impugned detention order after a period of seven months against the present petitioner. Mr.Prajapati has relied upon the decision of this Court reported in 1997 (1) GLH 381.

5. Ld.A.G.P. Mr.H.L.Jani, appearing on behalf of the respondent State has submitted that the State has not filed any reply and no explanation has been given of a

delay in passing the detention order but the facts remain that looking to the registered offences and unregistered offences against the present petitioner and materials which are on record, the detention order has been rightly passed by the detaining authority and therefore, no interference is required by this Court.

6. I have considered the submissions of both the learned advocates. Looking to the grounds of detention, the last offence was unregistered on 9th February, 2000 and in between no offence was registered or unregistered committed by the present petitioner and no statement of secret witness has been recorded by the detaining authority and no reply has been filed by the State, to explain the delay. Therefore, there was no proximate or having any direct nexus which required to pass impugned detention order against the present petitioner, after a period of seven months. Therefore, the view taken by this Court in paragraph 21 in reported decision 1997(1) GLH 381 is quoted as under :

"21. In the instant case, the last registered case is of May 20, 1996. The petitioner detainee was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S.Ramamurthy reported in 1993(2) Suppli.

7. I have considered the submission of both the learned advocates and looking to the facts which are not disputed between the parties and no reply has been filed by the State. No delay has been explained and considering the observation of this Court, according to my opinion, the order of detention dated 15th September, 2000 is required to be set aside.

8. In result the present petition is allowed. The order of detention passed by the District Magistrate, Surendranagar is hereby quashed and set aside. The present petitioner detenu Shri Kanubhai @ Raju Kanaiyalal Gordhanbhai Koli detained in Nadiad Jail is ordered to be released immediately, if he is not required in any other case. Rule is made absolute. No order as to costs.

(H.K.Rathod, J)

'Bhavesh'